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STATUTE:

National Labor Relations Act, as amended, 61 Stat. 136, 65 Stat. 601, 29 U.S.C. 151, *et. seq.*:
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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 723

AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO, as successor by merger to INTERNATIONAL FUR & LEATHER WORKERS UNION OF UNITED STATES AND CANADA, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD and LANNOM MANUFACTURING COMPANY

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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1. The Government does not oppose the granting of certiorari with respect to the question, encompassed by questions 1, 2, and 3 of the petition (Pet. 2-3), whether a union is rendered ineligible to receive benefits under the National Labor Relations Act when one of its officers has been convicted of filing a false non-Communist affidavit.

The National Labor Relations Board has uniformly held that such a union may be declared ineligible to invoke the processes of the Act. The Court of Appeals for the District of Columbia Circuit, however, has consistently held that while the Act imposes a criminal penalty for filing a false affidavit, it does not exclude the union from the benefits of the Act, even though the affidavits filed by its officers are in fact false. *Farmer* v. *United Electrical, Radio & Machine Workers,* 211 F. 2d 36, certiorari denied, 347 U.S. 943; *Farmer* v. *International Fur and Leather Workers Union,* 221 F. 2d 862; *International Union of Mine, Mill & Smelter Workers* v. *Farmer,* 226 F. 2d 780.[1] The court below disagrees with this construction.

The importance of a definitive determination of this question in the administration of the Act is emphasized by the history of the litigation leading up to the instant decision, as set forth in the petition (Pet. 5-8). Thus, the Court of Appeals for the District of Columbia Circuit affirmed a preliminary injunction, issued by the District Court for the District of Columbia on July 23, 1954, enjoining the Board from declaring the Union out of compliance with Section 9(h)

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[1] The Board contemplates filing a petition for a writ of certiorari in the *Mine Mill* case, cited above, but has deferred doing so because of a motion pending in the court of appeals for clarification of its judgment. On January 31, 1956, the Chief Justice granted an extension of time until April 7, 1956, in which to file such a petition. On March 15, 1956, the District of Columbia Circuit clarified and amended its judgment in the case.

of the Act,[2] because of the conviction of its president, Gold, for filing a false non-Communist affidavit. *Farmer* v. *International Fur and Leather Workers Union*, 221 F. 2d 862. When the Board, in obedience to this injunction, petitioned the Court of Appeals for the Sixth Circuit for enforcement of its unfair labor practice order in the instant case against the Lannom Manufacturing Company, that court dismissed the petition on the ground that the Board's complaint and order had been entered on a charge filed by a non-complying union. The court's finding of non-compliance was based upon the conviction of the union's president, Gold, for having filed a false non-Communist affidavit under Section 9(h) of the Act.[3] Since the official residence of the Board is the District of Columbia and injunctive proceedings against the Board may properly be brought only in the District, this anomaly will continue to exist or arise in the future until the question has been finally determined by this Court.

2. Petitioner's question 4 (Pet. 3) presents no issue appropriate for review by this Court. The decision of the Court of Appeals for the District of Columbia Circuit in the *Fur Workers* case, *supra*, was not *res judicata* in the instant case, since Lannom, against whom the Board's unfair

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[2] 61 Stat. 136, 146, 65 Stat. 601, 602, 29 U.S.C. 159(h).

[3] On March 9, 1956, the Court of Appeals for the District of Columbia Circuit by an evenly divided vote affirmed the conviction.

labor practice order in the instant case runs, was not a party to the District of Columbia action (*Postal Telegraph Cable Co.* v. *Newport,* 247 U.S. 464, 476; *Privett* v. *United States,* 256 U.S. 201, 203-204; Rule 65(d), Federal Rules of Civil Procedure) and the preliminary injunction issued by the District Court of the District of Columbia and affirmed by the Court of Appeals, was not a final judgment (*Merriam* v. *Saalfield,* 241 U.S. 22, 28). Nor does the full faith and credit clause of the Constitution have any application here "since neither of the courts concerned was a state court". *Baldwin* v. *Traveling Men's Assn.,* 283 U.S. 522, 524. Accordingly, the petition for a writ of certiorari should be denied so far as it relates to question 4.

Respectfully submitted,

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